***THE HON'BLE MR JUSTICE V.V.S.RAO**

+WRIT PETITION No.31851 of 1997

%Dated 31-07-2006

N.Rami Reddy

… Petitioner

VERSUS

$ Special Commissioner of Land Revenue, Nampally, Hyderabad and others.

… Respondents.

! Counsel for Petitioners: Sri N.Bharat Babu

^Counsel for Respondent: G.P for Revenue

<GIST:

>HEAD NOTE:

? Cases referred

1. 1994 (2) ALT 329
2. 1984 (2) ALT 386
3. 2003 (5) ALD 215
4. 1981 (2) APLJ 158 = 1981 (2) ALT 280
5. AIR 1969 SC 1297
6. AIR 1998 SC 688
7. 2003 (2) ALD 750

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.31851 OF 1997

31st JULY, 2006

BETWEEN

M.Rami Reddy

… Petitioner

vs.

The Special Commissioner of Land Revenue, Government of Andhra Pradesh, Nampally, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.31851 OF 1997

ORDER:

The petitioner is a resident of Patrapalle village of Thavanampalle Mandal of Chittoor District. He was assigned agricultural land admeasuring Acs.5.46 in survey No.144/1B of Sarakallu village in Thavanampalle Mandal by way of Dharakast patta (DKT patta). The fourth respondent herein allegedly tried to interfere with the possession, constrained by which the petitioner filed a suit being O.S.No.1071 of 1978 on the file of the Court of the II Additional District Munsif, Chittoor, for permanent injunction. The same was statedly decreed on 27.02.1987 against the fourth respondent. Aggrieved by the same, the fourth respondent filed A.S.No.54 of 1987, which was also dismissed by the Court of Additional District Judge, Chittoor on 08.11.1995. While the civil suit was pending, the fourth respondent also filed appeal before the Revenue Divisional Officer (RDO), Chittoor, third respondent herein, who by order, dated

10.07.1986 cancelled the patta on the ground that the petitioner made misrepresentation while applying for DKT patta, in that though the father of the petitioner was having land admeasuring Acs.25.00, he misrepresented as if he is a land less and poor person. The petitioner, therefore, filed a revision/appeal before the Joint Collector, the second respondent herein, who affirmed the order of the RDO on 31.03.1992. The petitioner, therefore, filed a revision under para 18 of BSO 15 before the first respondent, which was dismissed on 11.09.1996. The petitioner then filed W.P.No.25270 of 1996 before this Court. By order, dated 20.03.1997, this Court remanded the matter to the first respondent. Thereafter, the first respondent again considered the revision of the petitioner and dismissed the same by order, dated 13.11.1997. This writ petition is filed challenging the said order.

The RDO, third respondent, filed counter affidavit. The allegations made in the petitioner's affidavit are denied and it is further stated that the father of the petitioner was a wealthy farmer and was holding an extent of Acs.25.00 of land but still the petitioner obtained assignment of land admeasuring Acs.5.46 by representing that he is a landless and poor person. As per the Assignment Rules, only those persons who are landless and poor are eligible for assignment of Government land, but the petitioner's family was having more than Acs.25.00 of land. During the enquiries by the officials, it was found that the four brothers of the petitioner and one sister were owners of the lands and the joint family was holding considerable extent of land. At the time of grant of DKT patta, the petitioner withheld these facts and obtained assignment in his favour by misrepresentation, and therefore, in accordance with G.O.Ms.No.912, dated 02.08.1985, amending para 18 of BSO 15, the assignment obtained by misrepresentation was cancelled by the Joint Collector.

Learned counsel for the petitioner submits that the right of the petitioner has been upheld by the civil Court, and therefore, the cancellation of DKT patta is illegal and arbitrary. He would then urge that the allegation that the petitioner is owner of private land, that he is not landless and poor person is not correct, and therefore, the authorities misdirected in cancelling the assignment. Lastly, he would urge that the assignment was granted in 1961 and the fourth respondent apprehending that he may lose the suit filed an appeal before the RDO in 1985 after lapse of twenty four (24) years and for this reason, the appeal could not have been entertained by the RDO and other authorities.

Learned Assistant Government Pleader for Revenue (Land Acquisition) submits that when fraud and misrepresentation is employed in obtaining DKT patta, it is competent for Joint Collector to

cancel the assignment at any time without any limitation. He has taken this Court through the counter affidavit in support of the contention that the petitioner's father and brothers are landlords of the village and the petitioner is not entitled for the assignment and that he is not landless and poor person.

The question whether the petitioner is landless and poor person is essentially a question of fact. A perusal of the counter affidavit would show that the revenue officials conducted enquiry in the village and found that father of the petitioner and his brothers formed joint family having more than Acs.25.00 of land. It was a wealthy family. Secondly, before the RDO, Anjaneyulu Reddy, brother of the petitioner; and Abbayi Reddy, father of the petitioner filed certified copies of evidence in C.C.No.257 of 1977 on the file of the Court of the Judicial Magistrate of II Class, Chittoor in support of ownership of landed property held by them. The RDO relied on the same and came to the conclusion that the petitioner's family or petitioner is not landless and poor person. The Joint Collector also found that out of the total extent of Acs.11.52 in survey No.144 of Sarakallu village, an extent of Acs.5.46 was allotted to the father of the petitioner and another extent of Acs.5.46 was allotted to the petitioner. The Joint Collector came to the conclusion that it is not proper to allot the land to one family and that the assignment was obtained by the petitioner by misrepresentation. In arriving at these conclusions, the Revenue officials – both the RDO and Joint Collector; have considered the revenue records, the reports and relevant evidence, and therefore, this Court is not inclined to interfere with the findings recorded by the authorities.

It is the submission of the learned counsel for the petitioner – which is indeed main submission, that the RDO could not have entertained the appeal after lapse of about twenty four (24) years. According to the learned counsel, under para 18 of BSO 15, the assignment granted can be cancelled only within three years from the date of the order and even if the cancellation is necessary, the same has to be within a reasonable time, not exceeding twelve years. Strong reliance is placed on the decision of this Court in **P.Anasuyamma v Commissioner of Land Revenue**[1]**.** The learned Assistant Government Pleader placed strong reliance on **In Re P.Shyam Rao**[2] and **Habeeb Yahiya v Government of Andhra Pradesh**[3] in support of the submission that when the benefit is obtained by playing fraud and misrepresentation, the assignment can be cancelled at any time.

Para 18 of the BSO before it was amended in 1985, reads as under.

> **(18) Revision:-** (1) The order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is presented is final and no second appeal shall be admitted. But if at any time within three years of the original or appellate decision, the Collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation, he may in the case of an order passed by an officer subordinate to him, set aside, cancel or in any way modify the decision. The Board of Revenue may set aside, cancel or in any way modify the decision of an officer subordinate to it within three years if it is satisfied that the decision was grossly inequitable; it may also exercise similar powers without any limit of time where there has been a material irregularity in the procedure or where the decision exceeded the powers of the officer who passed it or where it was passed under a mistake of fact or owing to fraud or misrepresentation. All revision petitions in darkhast cases should be stamped with a Court fee label to the value of two rupees.

The Government of Andhra Pradesh by order made in G.O.Ms.No.912 (Revenue–B) Department, dated 02.08.1985, amended para 18. After amendment, the same reads as under.

> **(18) Revision:-** (1) The order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is disposed of, is final and no second appeal shall be admitted. But if, at any time after the passing of the original or appellate decision, the collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or mis-representation he may set aside, cancel or in any way modify the decision passed by an officer subordinate to him. No order should be reversed or modified adversely to the respondent without giving the respondent a notice to show cause against the action proposed to be taken adversely to him.

There is no dispute that if the jurisdiction is exercised for cancellation of patta on grounds of fraud and misrepresentation, BSO does not prescribe any limitation for exercise of revisional jurisdiction.

In **Re P.Shyam Rao** (supra), the facts are the following. In the year 1968, land was assigned to six persons on the basis that they were landless poor persons. Harizans of the village made a

representation to the Joint Collector alleging that the land was assigned illegally and that assignees are not landless poor persons. Therefore, Joint Collector, Warangal, issued notice to the petitioners, conducted enquiry and by order, dated 07.11.1983, cancelled the assignment. The petitioners then moved an application before the Joint Collector for re-hearing, which was denied. Therefore, a writ petition is filed before this Court by all the persons, whose assignment was cancelled. The principal submission in challenge to the cancellation was that the Joint Collector erred in exercising powers under Section 166-B of A.P.(Telangana Area) Land Revenue Act after long length of time. Reliance was placed on the Judgment of this Court in **A.Kodanda Rao v Government of A.P.,**[4] and **State of Gujarat v Patil Raghav Natha**[5]. This Court, however, rejected the submission holding that when fraud is played on the State, it becomes the duty of the authority to take action immediately after detecting the fraud. The relevant observations are as under.

> Where no innocent third party interests have crept in and where the nature of fraud or misrepresentation is so glaring and patent carrying out for judicial correction and where the assignee himself was a privy to the fraud played on the State, it becomes the duty of the authority to take action immediately the fraud is detected and discovered. It is for that reason the Statute gave power without reference to any time limit. The judgment of the Division Bench of this Court reported in **A.Kodanda Rao** (supra) is one rendered under the A.P.(Andhra Area) Estates (Abolition and Convertion into Ryotwari) Act, 1948, and strictly speaking will be of no use in this context. Even otherwise, I am not in a position to agree with the argument that the legal concept of reasonable time is the same as the ordinary physical concept of time. This court should not support the contention which will have the effect of alienating any Government land in favour of those who having more than 13 to 20 acres each had obtained assignments on the basis that they were landless poor. The theory of arbitrary cancellation and the improper exercise of jurisdiction, are all in my opinion, inapplicable to a case of this nature. This must have been the real reason why the assignees had never appeared before the Tahsildar and never contested the matter before him in spite of the service of notices on them. Having thus deliberately avoided the inquiry conducted by the Tahsildar, the assignees cannot now be heard to say that the inquiry itself was illegal and arbitrary.

In **Habeeb Yahiya** (supra), this Court referred to **Patil Raghav Natha** (supra), **Hindustan Times v Union of India**[6], **C.Subhash Mudiraj v Regional Joint Commissioner, Endowments**

Department, Hyderabad[7] and **In Re P.Shyam Rao** (supra), and held that when fraud is committed, the authorities competent to withdraw the benefit at any point of time.

In the present case, it is no doubt true that the assignment was made in favour of the petitioner in 1961. However, when it was brought to the notice of the RDO and Joint Collector that the petitioner was not entitled for any such assignment because he was not landless and poor and that his family was having considerable extents of agricultural lands, the assignment was cancelled. As observed by the Joint Collector, in the same survey number, land admeasuring Acs.5.46 guntas in survey No.144 was already assigned to Abbayi Reddy, father of the petitioner, and this itself would disentitle the petitioner to assignment. Therefore, the initial assignment was made relying on the misrepresentation made by the petitioner, and therefore, authorities were justified in cancelling the assignment. Time factor, in such an event, has to be ignored by the Court as it is the duty of the Court to prevent any person from getting the benefit obtained by fraud and misrepresentation.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

31.07.2006
Note: L.R Copy to be marked.
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[1] 1994 (2) ALT 329
[2] 1984 (2) ALT 386
[3] 2003 (5) ALD 215
[4] 1981 (2) APLJ 158 = 1981 (2) ALT 280
[5] AIR 1969 SC 1297
[6] AIR 1998 SC 688
[7] 2003 (2) ALD 750